

1 **ROUTH CRABTREE OLSEN, P.S.**

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Honorable Judge Timothy W Dore

Hearing Location: Seattle

Hearing Date: March 9, 2012

Hearing Time: 9:30am

Response Date: March 2, 2012

4 UNITED STATES BANKRUPTCY COURT
5 WESTERN DISTRICT OF WASHINGTON

6 IN RE:

7 SON D NGUYEN AND
8 DAO A DIEP

9 DEBTORS.

CHAPTER 7 BANKRUPTCY

NO.: 11-23940-TWD

10 **MOTION FOR RELIEF FROM AUTOMATIC STAY**

11 **(REAL PROPERTY)**

12 Bank of America, N.A., successor by merger to BAC Home Loans Servicing LP, fka
13 Countrywide Home Loans Servicing LP ("Movant") hereby moves this Court, pursuant to 11
14 U.S.C. § 362, for relief from the automatic stay with respect to certain real property of the
15 Debtors having an address of 349 17th Avenue, Seattle, WA 98122 (the "Property"), for all
16 purposes allowed by the Note (defined below), the Deed of Trust (defined below), and applicable
17 law, including but not limited to the right to foreclose. In further support of this Motion, Movant
18 respectfully states:

19 1. A petition under Chapter 7 of the United States Bankruptcy Code was filed with
20 respect to the Debtors on December 2, 2011.

21 2. The Debtors have executed and delivered or are otherwise obligated with respect to
22 that certain promissory note in the original principal amount of \$520,000.00 (the "Note"). A
23 copy of the Note is attached hereto as Exhibit A. Movant is an entity entitled to enforce the
24 Note.

3. Movant is an entity entitled to enforce the Note because Movant is in possession, either directly or through the use of an authorized agent and/or document custodian, of the Note endorsed in blank.

4. Pursuant to that certain Deed of Trust (the "Deed of Trust"), all obligations (collectively, the "Obligations") of the Debtors under and with respect to the Note and the Deed of Trust are secured by the Property. A copy of the Deed of Trust is attached hereto as Exhibit B.

5. The Debtors' statement of intent indicates the Property is to be surrendered.

6. As of January 9, 2012, the outstanding amount of the Obligations less any partial payments or suspense balance is \$638,449.78.

7. In addition to the other amounts due to Movant reflected in this Motion, as of the date hereof, Movant has incurred legal fees associated with the filing of this motion. Movant reserves all rights to seek an award or allowance of such fees and expenses in accordance with applicable loan documents and related agreements, the Bankruptcy Code and otherwise applicable law.

8. The following chart sets forth the number and amount of payments due pursuant to the terms of the Note that have been missed by the Debtors as of January 9, 2012:

Number of Missed Payments	From	To	Monthly Payment Amount	Total Amounts Delinquent
35	December 1, 2008	October 1, 2011	\$3,135.95	\$109,758.25
2	November 1, 2011	December 1, 2011	\$3,144.21	\$6,288.42
1	January 1, 2012	January 1, 2012	\$1,898.38	\$1,898.38

Total: \$117,945.05

9. The estimated market value of the Property is \$450,000.00. The basis for such valuation is Debtors' sworn schedules.

1 10. Upon information and belief, the aggregate amount of encumbrances on the Property
2 listed in the Schedules or otherwise known, including but not limited to the encumbrances
3 granted to Movant, is \$788,449.78.

4 11. Cause exists for relief from the automatic stay for the following reasons:

5 a. Movant's interest in the Property is not adequately protected. Movant's interest
6 in the collateral is not protected by an adequate equity cushion.

7 b. Pursuant to 11 U.S.C. § 362(d)(2)(A), Debtors has no equity in the Property; and
8 pursuant to § 362(d)(2)(B), the Property is not necessary for an effective reorganization.

9 WHEREFORE, Movant prays that this Court issue an Order terminating or modifying the
10 stay and granting the following:

11 1. Relief from the stay for all purposes allowed by the Note, the Deed of Trust, and
12 applicable law, including but not limited to allowing Movant (and any successors or assigns) to
13 proceed under applicable non-bankruptcy law to enforce its remedies to foreclose upon and
14 obtain possession of the Property.

15 2. That the Order be binding and effective despite any conversion of this bankruptcy
16 case to a case under any other chapter of Title 11 of the United States Code.

17 3. That the 14-day stay described by Bankruptcy Rule 4001(a)(3) be waived.

18 4. For such other relief as the Court deems proper.

19
20 DATED this 15 day of February, 2012.

21
22 **ROUTH CRABTREE OLSEN, P.S.**

23 By: /s/ Melissa Romeo
24 Melissa Williams Romeo, WSBA# 40644
25 Attorneys for Movant
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